

**IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE ORDER**

IN THE MATTER OF:

RICHARD SOLASBERRY, SR.
Jasper County, Iowa

ADMINISTRATIVE ORDER
NO. 2008-AQ- **21**
NO. 2008-SW- **15**

TO: Richard Solasberry, Sr., Owner
973 West 120th Street South
Colfax, IA 50054

Adam Otto, Attorney
211 1st Avenue, West
Newton, IA 50208

I. SUMMARY

This administrative order requires you to (1) cease open burning in the state of Iowa; (2) clean up unsalvageable material not kept for personal use by September 1, 2008; (3) not accept any additional unsalvageable material; (4) keep records of existing salvageable material; (5) remove a single load of salvageable material by September 1, 2008 and then continue to remove salvageable material at least one time per year; and (6) pay a penalty of \$750.00 within 30 days of the date the Director signs this order.

Questions regarding this administrative order should be directed to:

Relating to technical requirements:

Bill Gross, Environmental Specialist
DNR Field Office #5
401 SW 7th Street, Suite 1
Des Moines, Iowa 50309
Phone: 515/725-0268

Relating to legal requirements:

Anne Preziosi, Attorney for the DNR
Iowa Department of Natural Resources
7900 Hickman Road, Suite 1
Urbandale, Iowa 50322
Phone: 515/281-6243

Payment of penalty to:

Director of the DNR
Iowa Department of Natural Resources
Henry A. Wallace Building
Des Moines, Iowa 50319-0034

II. JURISDICTION

This order is issued pursuant to Iowa Code section 455B.307(2) which authorizes the director to issue any order necessary to secure compliance with or prevent a violation of Iowa Code chapter 455B, Division IV, Part 1 (solid waste), and the rules adopted pursuant to that part; Iowa Code sections 455B.134(9) and 455B.138(1) which authorize the director to issue any order necessary to secure compliance with or prevent a violation of Iowa Code chapter

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455B, Division II, (air quality), and the rules promulgated or permits issued pursuant to that part; and Iowa Code section 455B.109 and 567 Iowa Administrative Code (IAC) chapter 10, which authorize the director to assess administrative penalties.

III. STATEMENT OF FACTS

1. Richard Solasberry, Sr., operates a metal salvage yard in a wooded hillside area northwest of Colfax, Iowa. Items of metal at the salvage yard consist of vehicles, appliances and other miscellaneous items. The facility is located at the SE ¼, of section 43, Township 80N, Range 21W, in Jasper County. Its local address is 973 West 120th Street South, Colfax, Iowa 50054.

2. On April 9, 2007, while driving on I-80, Bill Gross, DNR Field Office #5, noticed a plume of dark smoke northwest of Colfax. Mr. Gross followed the plume of smoke to Mr. Solasberry's salvage yard, where he discovered between 10 and 20 burning tires. When DNR personnel arrived at the salvage yard, Mr. Solasberry was pouring buckets of water on the flames attempting to extinguish the fire and the DNR personnel assisted Mr. Solasberry until the fire was extinguished. Mr. Solasberry reported to the DNR personnel that the fire was accidentally ignited by a cutting torch.

3. On April 12, 2007, a Notice of Violation letter was issued by DNR to Mr. Solasberry for improper burning violations. The letter informed Mr. Solasberry that the matter was being referred to the DNR Legal Services Bureau. DNR received solid waste disposal complaints against Mr. Solasberry in 1987, 1999, and 2005.

4. In August 2007, Mr. Gross again visited the site to examine the progress being made toward the cleanup of debris from the salvage yard. At this time, most of the appliances that were previously piled near the site entrance, as well as some material further into the yard, had been removed. However, there were still various piles of auto parts, furniture, and tires throughout the salvage yard. Mr. Solasberry was informed by Mr. Gross that the furniture and other unsalvageable material needed to be removed immediately, followed by work on removing the rest of the auto parts. Mr. Solasberry was also informed that he needed to show continued progress with removal and keep a record of disposal.

5. On June 18, 2008, Mr. Gross met with Mr. Solasberry to examine the site. During the investigation, Mr. Gross observed that the site was overgrown with vegetation and that there were piles of miscellaneous metal items scattered throughout the site. Furniture had been removed from the site, but other unsalvageable material, such as old boards, tires, and other miscellaneous debris, remained at the site. Pictures were taken to document the conditions of the site.

IV. CONCLUSIONS OF LAW

1. Iowa Code section 455B.133 provides that the Environmental Protection Commission (Commission) shall establish rules governing the quality of air and emission standards. The Commission has adopted 567 IAC chapters 20-34 relating to air quality.

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2. 567 IAC 23.2(1) prohibits any person from allowing, causing, or permitting open burning of combustible materials, except as provided in rules 23.2(2) (variances) and 23.2(3) (exemptions). On April 9, 2007, DNR personnel discovered burning tires on Mr. Solasberry's property. The above-mentioned facts indicate a violation of this provision.

3. Iowa Code section 455B.304 provides that the Commission shall establish rules governing the handling and disposal of solid waste. The Commission has adopted 567 IAC chapters 100-123.

4. 567 IAC 100.4 prohibits a private or public agency dumping or depositing or allowing the dumping or depositing of any solid waste at any place other than a sanitary disposal project approved by the director. The above facts demonstrate non-compliance with this provision.

V. ORDER

THEREFORE, the DNR orders Richard Solasberry, Sr. to do the following:

1. Immediately stop the open burning at this site or at any other site within the State of Iowa and prevent it from happening in the future;

2. By September 1, 2008 clean up any unsalvageable waste at the site and provide to DNR Field Office No. 5 the landfill receipts. Unsalvageable material includes parts of furniture, plastic auto parts not attached to cars, other miscellaneous plastic containers and other debris that cannot be easily salvaged or used. Materials kept for personal use should be neatly and properly stored and not scattered on the ground;

3. Beginning with the date this order is issued, **do not receive any additional unsalvageable material at the site**. Salvageable material may still be received at the site in accordance with his license to operate a salvage yard. If unsalvageable material is placed at the site without Mr. Solasberry's knowledge it must be properly disposed of at a landfill within 30 days of being received;

4. On the first day of every second month, beginning with September 1, 2008, create a written record of any salvageable waste material at the site, stating (a) the type of material received, and (b), the date upon which the waste material was deposited at the site;

5. Remove a single load of salvageable material by September 1, 2008. After this initial removal, at least one load of salvageable material must be removed from the site at least one time per year; and

6. Pay a penalty of \$750.00 within 30 days of the date this order is signed by the Director.

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VI. PENALTY

1. Iowa Code section 455B.146 authorizes the assessment of civil penalties of up to \$10,000.00 per day of violation for each of the air quality violations involved in this matter. More serious criminal sanctions are also available pursuant to Iowa Code section 455B.146A. Iowa Code section 455B.307(3) authorizes the assessment of civil penalties of up to \$5,000.00 per day of violation for the solid waste disposal violations involved in this matter.

2. Iowa Code section 455B.109 authorizes the Commission to establish by rule a schedule of civil penalties up to \$10,000.00, which may be assessed administratively. The Commission has adopted this schedule with procedures and criteria for assessment of penalties in 567 IAC chapter 10. Pursuant to these chapters, the DNR has determined that the most effective and efficient means of addressing the above-cited violations is the issuance of an administrative order with an administrative penalty of \$750.00. The administrative penalty is assessed to Richard Solasberry, Sr., and is determined as follows:

Economic Benefit – Mr. Solasberry saved time and money by improperly burning and not disposing of the tires at an approved recycler or disposal project. He saved both transportation and labor costs of approximately \$100.00 by not hauling the tires to a local recycling center. Based on the above considerations, \$100.00 is assessed for this factor.

Gravity of the Violation – The open burning of solid waste can release toxins which pollute the air, may pollute groundwater, and pose a risk to human health and the environment. The open burning of tires results in the release of several air pollutants including volatile organic compounds, sulfur dioxide, and nitrogen oxides. These violations threaten the integrity of the regulatory program because compliance with the open burning rules is required of all persons in this state. Based on the above considerations, \$375.00 is assessed for this factor.

Culpability – Mr. Solasberry has a duty to remain knowledgeable of DNR's requirements and to be alert to the probability that his conduct is subject to DNR's rules. Mr. Solasberry has been in contact with DNR in the past concerning solid waste disposal issues. The regulations concerning open burning of rubber tires has become common knowledge and Mr. Solasberry has a duty to be aware of the open burning requirements. Based on the above considerations, \$275.00 is assessed for this factor.

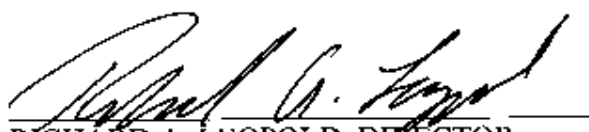
VII. APPEAL RIGHTS

Pursuant to Iowa Code section 455B.138 and 567 IAC 7.5(1), a written Notice of Appeal to the Commission may be filed within 30 days of receipt of this order. The Notice of Appeal should be filed with the Director of the DNR and must identify the specific portion or portions of this order being appealed and include a short and plain statement of the reasons for appeal. A contested case hearing will then be commenced pursuant to Iowa Code chapter 17A and 561 IAC Chapter 7.

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VIII. NONCOMPLIANCE

Failure to comply with this administrative order, including failure to timely pay any penalty, may result in the imposition of further administrative penalties or referral to the attorney general to obtain injunctive relief and civil penalties pursuant to Iowa Code section 455B.146. Compliance with Section "V. Order" of this administrative order constitutes full satisfaction of all requirements pertaining to the specific violations described in Section "IV. Conclusions of Law" of this administrative order.



RICHARD A. LEOPOLD, DIRECTOR
Iowa Department of Natural Resources

Dated this 25 day of
--- July ---, 2008.

Jasper County; Anne Preziosi; Field Office 5; Bill Gross; VI.C; VII.C.1